

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

EZELL BROWN, by and through
his Conservatrix Sheakenia Brown

PLAINTIFF

v.

CIVIL ACTION NO. 4:15-CV-105-DMB-JMV

RULEVILLE NURSING AND
REHABILITATION CENTER, LLC

DEFENDANT

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Ruleville Nursing and Rehabilitation Center, LLC ("Ruleville") files this Notice of Removal of the civil action styled *Ezell Brown, by and through his Conservatrix Sheakenia Brown v. Ruleville Nursing and Rehabilitation Center, LLC*; Civil Action No. 2015-0158, from the Circuit Court of Sunflower County, Mississippi, to the United States District Court, for the Northern District of Mississippi, Greenville Division. In support of this Notice, Ruleville states the following:

1. Plaintiff Ezell Brown filed this medical negligence action on July 1, 2015. The lawsuit arises out of the care and treatment provided to Ezell Brown while a resident of Ruleville Nursing and Rehabilitation Center, LLC. According to the Complaint, Ezell Brown suffered injuries as a result of Ruleville's alleged negligence.

2. Plaintiff served Ruleville with a copy of a Summons and Complaint on August 6, 2015. *See* Exhibit A.¹ This Notice of Removal is filed within thirty days of receipt of the Summons and Complaint and is thus timely under 28 U.S.C. § 1446(b).

3. Venue is proper in the United States District Court for the Northern District of

¹ Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons served on Ruleville is included in Exhibit A.

Mississippi, Greenville Division, because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 104(a)(3).

4. The Court has diversity jurisdiction over this matter under 28 U.S.C. § 1332 because (1) the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, and (2) there is diversity of citizenship between the Plaintiff and Ruleville.

5. It is apparent that the amount in controversy requirement is met because Plaintiff seeks damages for "severe pain and suffering," mental anguish, and past, present, and future medical expenses. *See Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000) (holding that it was facially apparent from the plaintiff's complaint that the amount in controversy was satisfied where the plaintiff alleged damages for mental anguish, suffering, loss of wages, and medical expenses). Moreover, Plaintiff seeks punitive damages. A claim for punitive damages also must be considered while evaluating the amount in controversy. *See St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) (holding that a district court must consider any claim for punitive damages when calculating the amount in controversy). Indeed, "federal courts in Mississippi have consistently held that a claim for an unspecified amount of punitive damages is deemed to exceed the federal jurisdictional minimum." *Sun Life Assur. Co. v. Fairley*, 485 F. Supp. 2d 731, 735 (S.D. Miss. 2007) (citing *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1255 (5th Cir. 1998)).

6. Diversity of citizenship exists because the Plaintiff alleges to be a citizen of Mississippi, and Ruleville is not a citizen of Mississippi. Compl. at ¶ 1. As set forth in detail below, Ruleville Nursing and Rehabilitation Center, LLC, is a Mississippi limited liability company whose members are all citizens of the State of New York. Therefore, Ruleville is a citizen of New York, not Mississippi. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077,

1080 (5th Cir. 2008) (holding that the citizenship of an LLC is that of all its members).

7. Ruleville Nursing and Rehabilitation Center, LLC's members are D&N, LLC, and DTD HC, LLC. D&N, LLC, and DTD HC, LLC, are New York limited liability companies. D&N, LLC's members are Norbert A. Bennett, the Norbert A. Bennett Children's Trust, and the Norbert A. Bennett Grand-Children's Trust. Mr. Bennett is a citizen of New York. The trustee of the Norbert A. Bennett Children's Trust is Ronald Bennett, a citizen of New York, and the trustee of the Norbert A. Bennett Grand-Children's Trust is also Ronald Bennett. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 n. 6 (5th Cir. 2009) (citing *Navarro Savs. Ass'n v. Lee*, 446 U.S. 458, 464 (1980) (holding that the citizenship of a trust is that of its trustee)).

8. DTD HC, LLC's members are Donald T. Denz and the Donald T. Denz Irrevocable Trust. Mr. Denz is a resident and citizen of the State of New York. The trustee of the Donald T. Denz Irrevocable Trust is Martin J. Clifford, a citizen of New York.

9. For these reasons, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper under §§ 1441 and 1446.

10. In accordance with 28 U.S.C. § 1446(d), Sunflower County Circuit Court and Plaintiff's counsel have been given written notice of the filing of this Notice of Removal. *See* Exhibit B.

WHEREFORE, Ruleville Nursing and Rehabilitation Center, LLC, requests that the above-captioned action now pending in Sunflower County Circuit Court be removed to the United States District Court for the Northern District of Mississippi, Greenville Division, and that the District Court assume jurisdiction over this lawsuit.

This the 17th day of August, 2015.

Respectfully submitted,

RULEVILLE NURSING AND
REHABILITATION CENTER, LLC

By Its Attorneys,

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By: s/ Clay Gunn
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CERTIFICATE OF SERVICE

I hereby certify that I have mailed the foregoing *Notice of Removal* via U.S. mail, postage prepaid, to the following counsel of record:

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COUNSEL FOR PLAINTIFF

This the 17th day of August, 2015.

s/ Clay Gunn

CLAY GUNN